APPENDIX

STATUTORY PROVISIONS INVOLVED

This case involves the following statutes of the State of Wisconsin:

(a) Wis. Stat. § 267.01 (1967 Pocket Part)

(1) Any creditor may proceed against any person who is indebted to or has any property in his possession or under his control belonging to such creditor's debtor, as prescribed in this chapter. "Plaintiff" as used in this chapter includes a judgment creditor and "defendant", a judgment debtor.

(2) Except as otherwise provided in this chapter, the procedure in garnishment actions shall be the same as in ordinary civil actions.

(2a) A garnishment action is a separate action.

(3) An individual may commence a garnishment action in his own person and in his own behalf, or by an attorney licensed to practice in the courts of this state, but not otherwise. Garnishment actions on behalf of any other party shall be commenced only by attorneys licensed to practice in the courts of this state.

(4) No garnishment action shall be brought to recover the price or value of spirituous, malt, ardent or intoxicating liquors sold at retail.

(b) Wis. Stat. § 267.02 (1967 Pocket Part)

(1) A plaintiff may commence a garnishment action at any time after:

(a) A summons is issued: 1. In an action for damages founded upon contract, express or implied (or in a contract action where a writ of attachment could issue on demands not yet due under s. 266.03(3)). 2. In an action upon a judgment. 3. In a tort action where a writ of attachment could issue under s. 266.03(2).

(b) An execution upon an in personam judgment is issuable.

(2) If wages or salary are the subject of a garnishment action, and payment of wages or salary to the defendant is, has been, or should be, withheld therein, plaintiff may not commence any other garnishment action affecting the wages or salary of the principal defendant prior to judgment in the principal action.

(3) Except as provided in sub. (2), the plaintiff may, in like manner, subsequently proceed against other garnishees, or, if he has reason to believe they have subsequently become liable, against the same garnishee.

(c) Wis. Stat. § 267.04 (1967 Pocket Part)

(1) Upon payment to the clerk of a clerk's fee of $2 and a suit tax of $1, the clerk shall issue a garnishee summons together with

sufficient copies to the plaintiff or his attorney; the summons form may be in blank, but must carry the court seal.

(c) Wis. Stat. § 267.05 (1967 Pocket Part)

(1) The garnishee complaint in a garnishment action before judgment must allege the existence of one of the grounds for garnishment mentioned in s. 267.02(1)(a), the amount of the plaintiff's claim against the defendant, above all offsets, known to the plaintiff, and that plaintiff believes that the named garnishee is indebted to or has property in his possession or under his control belonging to the defendant (naming him) and that such indebtedness or property is, to the best of plaintiff's knowledge and belief, not exempt from execution.

(d) Wis. Stat. § 267.07 (1967 Pocket Part)

(1) Except as provided in s. 267.05(4), the garnishee summons and complaint shall be served on the garnishee as required for the exercise of personal jurisdiction under ch. 262, and notice of such service in substantial conformity with sub. (4), or a copy of the garnishee summons and complaint, together with the summons in the principal action, shall be served on the principal defendant as required for the exercise of personal jurisdiction under ch. 262, not later than 10 days after service on the garnishee as provided in s. 262.06.

(e) Wis. Stat. § 267.13 (1967 Pocket Part)

(1) If the answer shows a debt due to the defendant, the garnishee may pay the same or sufficient thereof to cover the claim of the plaintiff, as stated in the garnishee complaint, with interest and costs, to the clerk of the court. If prior to so doing, the plaintiff in writing requests the garnishee to pay such sum to such clerk, the garnishee shall, within 5 days after receipt of such request, pay the sum to the clerk. The clerk shall give his receipt therefor to the garnishee. Such payment shall discharge the garnishee of all liability for the amount so paid.

(2) If the debt disclosed is not due, this section shall apply when it becomes due, with like effect.

(3) If the garnishee fails to pay such sum within 5 days after receipt of such request, the plaintiff shall be entitled to judgment against the garnishee for the amount disclosed, when due, either before or after judgment in the original action and may collect the same by execution; but in case no judgment has been rendered in the principal action the execution against the garnishee shall require the sheriff to pay the money collected into court to abide the event of the principal action. Moneys paid into court shall be paid to the plaintiff when final judgment is rendered in his favor, and to the extent of satisfying the same, upon order of the court, and any balance to the party entitled thereto.

(4) If no such request is made and the garnishee does not elect to pay such sum to the clerk, the garnishee shall hold the same until order of the court. No stipulation between the plaintiff and the defendant shall be honored by the garnishee, until signed and approved by the court.

(5) If judgment is against the plaintiff such moneys shall be paid to the defendant.

(f) Wis. Stat. § 267.16 (1967 Pocket Part)

(1) No trial shall be had of the garnishment action until the plaintiff has judgment in the principal action and if the defendant has judgment the garnishment action shall be dismissed with costs.

(2) The court may adjudge the recovery of any debt, the conveyance, transfer or delivery to the sheriff or any officer appointed by the judgment of any real estate or personal property disclosed or found to be liable to be applied to the plaintiff's demand; or by the judgment pass the title thereto; and may therein or by its order direct the manner of making sale and of disposing of the proceeds thereof, or of any money or other thing paid or delivered to the clerk or officer. The judgment against a garnishee shall discharge him from all demands by the defendant for all property paid, delivered or accounted for by the garnishee, by force of such judgment.

(g) Wis. Stat. § 267.18 (1967 Pocket Part)

(1) From the time of the service of the summons and complaint upon the garnishee he shall stand liable to the plaintiff for the property then in his possession or under his control belonging to the defendant or in which he is interested to the extent of his right or interest therein and for all his debts due or to become due to the defendant, except such as are exempt from execution, but not in excess of the amount of the plaintiff's claims as disclosed by his garnishee complaint together with 25 per cent of the amount claimed in the garnishee complaint but not less than $25 nor more than $500 to secure costs.

(2) (a) When wages or salary are the subject of garnishment action, the garnishee shall pay over to the principal defendant on the date when such wages or salary would normally be payable a subsistence allowance, out of the wages or salary then owing, in the sum of $25 in the case of an individual without dependents or $40 in the case of an individual with dependents; but in no event in excess of 50 per cent of the wages or salary owing. Said subsistence allowance shall be applied to the first wages or salary earned in the period subject to said garnishment action.

(b) If the court determines that the principal defendant is entitled to an exemption in excess of the subsistence allowance paid over or to be paid over pursuant to this subsection, such subsistence allowance shall be set off and applied against said exemption.

If the court determines that the principal defendant is entitled to an exemption less than the subsistence allowance paid over or to be paid over pursuant to this subsection, such subsistence allowance shall be the exemption to which the principal defendant is entitled in such garnishment action.

(h) Wis. Stat. 267.20 (1967 Pocket Part)

Except upon the order of a judge no action shall be commenced by the defendant or his assignee against a garnishee upon any garnished claim or demand or to recover any property garnished, or execution be issued upon a judgment in favor of defendant against such garnishee, until the termination of the garnishment; and if an action has been commenced or an execution issued it shall be stayed by the court or a judge thereof as to the garnishee upon his application.

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